

**REMARKS/ARGUMENTS**

Claim 1-3 and 10-12 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,575,770 to Melsky et al. The Examiner maintains that discloses a reservoir 45 and an injection access port 52. The Examiner asserts that the access port is openable and closable by a shield 140.

Claims 4 and 5 stand rejected under 35 USC 103(a) as being unpatentable over Melsky in view of U.S. Patent No. 4,615,691 to Hakim et al. The Examiner admits that Melsky does not teach or suggest the use of a magnetic rotor and magnetic driver. The Examiner is relying on Hakim for the teachings of a magnetic rotor and magnetic driver, and concludes that it would have been obvious to one of ordinary skill in the art to provide a magnetic rotor and magnetic driver on the Melsky device based on Hakim's teachings.

Applicants appreciatively acknowledge the indication that claims 13-17 are allowed and that claims 6-9, 18 and 19 contain allowable subject matter. However, for the reasons discussed below, Applicants believe that the present invention is allowable over the prior art of record.

Independent claims 1 and 10 of the present invention are directed to an apparatus and method of restricting access to a drug reservoir of an implantable infusion pump. The pump includes a reservoir for containing medication and an injection access port into the reservoir. The Examiner has interpreted Melsky as having a reservoir 45, and an access port 52. However, port 52 is a bolus port. Thus, port 52 directly connects to the outlet catheter 56. Therefore, bolus port 52 does not have access into reservoir 45 as required by the present invention. For this reason alone, Melsky fails to anticipate the present invention.

The present invention also requires an openable and closable shield at the access port blocking access of an injection needle into the port when closed and allowing access of the injection needle into the port when open. The Examiner maintains that Melsky's bolus port 52 is openable and closable by a shield 140. Applicants' respectfully disagree.


Shield (or lever as Melsky refers to this element) 140 is moveable by a needle, any needle. As such, Melsky's lever 140 does not block access of an injection needle into port 52, as required by the present invention. As the distal tip of the needle abuts lever 140, the needle will move the lever 140 to its lower position, thereby opening a safety valve 164, 168. Safety valve 164, 168 connects bolus port 52 with the outlet catheter 56.

Melsky's system works by using a specially shaped needle 222 that has a side discharge opening at a predetermined distance from the needle's distal tip. This needle's tip contacts and moves lever 140 to its lower position, thereby opening valve 164, 168 to establish a fluid path from bolus chamber 185 to the outlet catheter 56, bypassing the flow restrictor in the pump's main body (including the reservoir which is upstream of the flow restrictor). See Melsky, column 9, lines 1-51. Melsky makes it clear that a conventional needle can depress lever 140 and open the safety valve (col. 9, lines 34-52). Thus, Melsky's lever 140 is not an openable and closable shield at the access port blocking access of an injection needle into the port when closed and allowing access of the injection needle into the port when open, as required by the present invention. Thus, Melsky fails to teach or suggest the present invention. While Hakim does teach the use of a magnetic rotor and magnetic driver in a shunt, Hakim fails to teach or suggest the deficiencies noted in Melsky above. Accordingly, the present invention is in condition for allowance and an early indication of such is respectfully requested.

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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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